

Wiley Secures Global Settlement for FuelCell Energy in Parallel ICC Arbitrations

January 5, 2022

Washington, DC – Wiley helped secure a favorable settlement on behalf of client FuelCell Energy Inc. to resolve a wide-ranging dispute with POSCO Energy Co., Ltd. involving multiple arbitral and litigation proceedings. FuelCell Energy is a global leader in fuel cell technology with a purpose of utilizing its proprietary, state-of-the-art fuel cell platforms to enable a world empowered by clean energy.

The dispute between FuelCell Energy and POSCO Energy arose out of a series of licensing agreements that provided POSCO Energy with exclusive rights to FuelCell's technology in Korea and broader Asia. On behalf of FuelCell, Wiley initiated breach-of-contract claims in parallel ICC arbitrations seated in London and Singapore, asserting that POSCO Energy failed to exercise commercially reasonable efforts to license FuelCell technology. POSCO Energy asserted counterclaims. Collectively, the parties sought over \$1 billion in damages.

The settlement agreement confirms FuelCell's exclusive rights to market its technology in the critical Korean and larger Asia markets going forward. Under the agreement, FuelCell Energy also received a large initial order for fuel cell modules to service existing South Korean operating projects. The agreement further establishes a framework for additional module orders. POSCO Energy agreed to dismiss its claims against FuelCell with prejudice.

The settlement follows a mediation process facilitated by Mr. George Lim of the Singapore International Mediation Centre.

The settlement also follows victories that Wiley obtained for FuelCell in related litigation proceedings. Specifically, Wiley obtained a favorable ruling for FuelCell in a Delaware suit, in which POSCO

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Practice Areas

Global Disputes
Litigation

Energy filed a statutory demand to inspect FuelCell's books and records. The landmark decision constituted one of the few times in history that a Delaware Chancery Court denied a plaintiff's books-and-records request on the grounds that the demand had been made for an improper purpose.

Wiley also obtained the dismissal of a securities-related lawsuit that POSCO Energy filed in the U.S. District Court for the Southern District of New York. The suit arose from a dispute concerning millions of restricted shares of FuelCell stock that POSCO Energy sought to sell in the summer of 2018. POSCO Energy alleged that FuelCell unreasonably delayed in removing a restrictive legend from the shares, resulting in losses to POSCO Energy. The District Court dismissed all four counts of the complaint, agreeing with novel arguments advanced by Wiley that, under both New York contract law and Delaware's General Corporation Law, a plaintiff cannot properly state an unreasonable delay claim without alleging in detail that the relevant conditions precedent have been met. The court granted POSCO Energy the right to amend its complaint but eliminated virtually all POSCO Energy's alleged damages.

"We are heartened that the parties were able to resolve their disputes," said Wiley partner Gregory M. Williams, who led the firm's team representing FuelCell Energy. "In particular, we are glad that FuelCell Energy was able to confirm its exclusive rights to the critical Korean and wider Asian markets moving forward."

The Wiley team representing FuelCell Energy was led by Williams and included Mark B. Sweet, Tatiana Sainati, Joshua B. Simmons, Enbar Toledano, and Lukman S. Azeez.